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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,712	07/07/2003	Thomas P. Chojnacki	103524.0515869	7930
7590 04/02/2004				
FROST BROWN TODD LLC				
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Cincinnati, OH 45202-4182				
		EXAMINER		
		CEGIELNIK, URSZULA M		
		ART UNIT		
		3712		
		PAPER NUMBER		
		DATE MAILED: 04/02/2004		

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/614,712

Applicant(s)

CHOJNACKI ET AL.

Examiner

Urszula M Cegielnik

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 07 July 2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daravina in view of Gittens et al. and Murphy et al.

A toy and a game comprising a spherical magnet (29); an elastic shell (28) encompassing the magnet (29); the elastic shell comprises an elastopolymer (col. 4, lines 18-20); and a target layer (12) having a magnetic attractive capacity (col.; col. 3, lines 43-44)

Daravina does not disclose the spherical magnet being a rare earth magnet (NdFeB, SmCo) and the elastic shell comprising polymer foam.

Gittens et al. disclose a magnet in the form of a rare earth magnet (NdFeB, SmCo) (col. 4, lines 22-32).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a magnet in the form of a rare earth magnet as taught by Gittens et al., since Gittens et al. state at col. 4, lines 27-29, that such a modification would allow the magnet to have added strength as well as a reduced size (making the overall device much lighter).

Murphy et al. teach a ball made of polymer foam (col. 1, lines 6-10).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the elastic shell made of polymer foam as taught by Murphy et al., since Murphy et al. state at col. 1, line 6-10 that such a modification would provide improved compositions having densities and rebound properties particularly useful in manufacturing of game balls

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Neilson.

Neilson teaches a magnet made of AlNiCo.(col. 2, lines 56-57).

It would have been obvious to one having ordinary skill at the time the invention was made to provide a magnet made of AlNiCo) as taught by Neilson as an alternate magnet for use in a ball.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 703-306-5806. The examiner can normally be reached on Monday through Friday, from 5:30AM - 2:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 703-308-1745. **The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 for both regular and After Final communications.**

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at 703-306-5648.

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Urszula M. Cegielnik
Assistant Examiner
Art Unit 3712

A handwritten signature in black ink, appearing to read 'D. Banks', with a long horizontal flourish extending to the right.

DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700